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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re N.T., a Person Coming Under the Juvenile
Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

N.T.,

Defendant and Appellant.

F077637

(Super. Ct. No. JL004624N)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Merced County. John D. Kiriara, Judge.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and Michael Dolida, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Detjen, Acting P.J., Peña, J. and DeSantos, J.

INTRODUCTION

Appellant N.T. (the minor) was committed to the Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ) on May 16, 2018, after the fifth Welfare and Institutions Code¹ section 602 petition against the minor was sustained. The minor challenges the commitment to the DJJ. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

On June 14, 2013, the Merced County District Attorney's Office filed a section 602 petition against the then 12-year-old minor, alleging he committed second degree burglary (Pen. Code, § 459); and possessed marijuana (Health & Saf. Code, § 11357, subd. (d)). Both offenses were identified as misdemeanors. On August 1, 2013, the minor admitted the burglary offense and the possession of marijuana offense was dismissed. The minor was adjudged a ward of the court, placed on probation, and ordered to complete 40 hours of community service.

A notice of probation violation was filed against the minor on September 10, 2013, alleging that he possessed alcohol and marijuana and exhibited symptoms of intoxication while at school. The minor admitted the probation violations. The juvenile court ordered the minor to complete the "Bear Creek Academy Home Commitment Level 3."

On October 16, 2013, the probation department filed a second notice of violation of probation alleging the minor removed his ankle monitor, which the Bear Creek program required he wear, and failed to return home after school; the minor's whereabouts were unknown. The minor admitted the probation violations on October 21, 2013, and the juvenile court ordered him to complete the Bear Creek Academy Home Commitment Level 3 program.

¹ References to code sections are to the Welfare and Institutions Code unless otherwise specified.

A third notice of probation violation was filed on December 4, 2013, alleging the minor had been suspended from school for fighting and failed to complete the court-ordered Bear Creek program. Once again, the minor admitted the probation violation allegations and the juvenile court again ordered the minor to complete the Bear Creek Academy Home Commitment Level 3 program.

A fourth notice of probation violation was filed against the minor on January 24, 2014, alleging he violated his curfew, removed his GPS ankle monitor, and was terminated from the court-ordered Bear Creek program. The minor admitted the probation violations. The juvenile court ordered him to complete the Bear Creek Academy Level 3 program.

A fifth notice of probation violation was filed against the minor on February 19, 2014, alleging he failed to return home by curfew on February 15, 2014, and his whereabouts were unknown, he had removed his GPS ankle monitor, and had been terminated from the court-ordered Bear Creek program. The minor failed to appear on the probation violation and a bench warrant was issued.

On March 6, 2014, the minor admitted the violations in the fifth probation violation notice. The juvenile court once again ordered the minor to complete the Bear Creek Academy Level 3 program.

On June 9, 2014, the probation department filed a sixth notice of probation violation against the minor, alleging he left home on June 6, 2014, and had not returned; his whereabouts were unknown.

Subsequently on June 19, 2014, the People filed a second section 602 petition alleging the minor was in possession of a controlled substance in violation of Business and Professions Code section 4060. The petition also alleged that the offense constituted a probation violation, which would be the minor's seventh violation. On June 24, 2014, the minor admitted the allegations of the petition, including that he had violated probation.

At the July 10, 2014 disposition hearing, the minor was now 13 years old. The minor was placed on probation and ordered into the Bear Creek Short Term Home Commitment Level 2 program.

A third section 602 petition was filed against the minor on August 22, 2014, alleging the minor brought a weapon, a knife, to school in violation of Penal Code section 626.10, subdivision (a)(1). The petition also alleged that the offense constituted a probation violation, the minor's eighth. The minor admitted the allegations of the third section 602 petition, including that he had violated probation. The minor was ordered to begin the Bear Creek Academy Level 2 program "forthwith."

On May 6, 2015, an amended section 602 petition was filed against the minor. This was the fourth section 602 petition. This petition alleged the minor had committed two felonies: first degree robbery in violation of Penal Code section 211 and being a minor in possession of a concealed firearm in violation of Penal Code section 29610. This time, the minor pled no contest to the offenses and admitted his ninth probation violation.

At the May 29, 2015 disposition hearing, the juvenile court placed the minor on probation, ordered the minor to serve 30 days in juvenile hall, credited him with time served, and ordered the minor's commitment to the Bear Creek Academy Youth Treatment program to include local confinement not to exceed two years.

On June 9, 2016, the probation department filed a notice of violation of probation, alleging the minor had violated probation by possessing marijuana, a crystal substance that appeared to be methamphetamine, and ammunition, and that he failed to comply with the rules and regulations of the Bear Creek Academy Youth Treatment program. The minor admitted the allegations.

At the June 24, 2016 disposition, the juvenile court ordered the minor confined in juvenile hall for 18 days, credited him with time served, and ordered him to complete the Bear Creek Academy Youth Treatment program. The juvenile court noted that if he

failed to take advantage of this opportunity, “options outside of commitment to DJJ will be limited.”

Another notice of violation of probation was filed against the minor on October 5, 2017. The minor was not complying with the rules of the Bear Creek program, was not regularly attending school, and had not been home since September 29, 2017; his whereabouts were currently unknown. The probation officer requested a bench warrant be issued.

The minor admitted the latest probation violation allegations on November 3, 2017. On November 17, 2017, the minor was ordered to complete the Bear Creek Academy Youth Treatment program phase four.

On December 27, 2017, the People filed a fifth section 602 petition against the minor, alleging he committed second degree robbery, a felony. At a hearing on March 28, 2018, the People amended the petition to allege the substantive gang offense set forth in Penal Code section 186.22, subdivision (a) as count 2, a misdemeanor. The minor admitted both the robbery and the gang offense charges.

At the May 16, 2018 disposition hearing, the minor’s counsel reported that he had been diagnosed with cannabis use disorder. Counsel argued that he was “a young man with a substance abuse issue” and because of that had committed “one of the saddest robberies you can commit” where he robbed a store of beer. Counsel maintained the minor was under the influence of marijuana at the time of the robbery. Counsel argued the minor should be given another opportunity in a local program.

The People responded that any use of cannabis by a minor is cannabis use disorder “because minors are not supposed to be using marijuana.” The prosecutor argued the minor had five years of probation violations and offenses, including a robbery where he and another juvenile pointed an AK-47 at the victim in order to facilitate the robbery. The minor had been committed to the highest level local program four times but failed to reform. The prosecutor opined that “we cannot keep doing the same thing over and over

and over again.” The prosecutor argued that “DJJ is the perfect place” for the minor to receive substance abuse and other treatments.

Probation noted they had been dealing with the minor since 2013 and “have done every program with” the minor. Probation opined, “when he gets out, there’s issues” and “there is a point where we can’t do anything.” The minor’s “gang ties have gotten worse.” The parents indicated the minor does not go to school, he does not go home, and “they can’t find him.” The minor, now 17 years old, could “get a degree” in the DJJ and the DJJ had vocational and “tech” programs in which the minor could participate.

The juvenile court noted that “the minor has been tried repeatedly at the highest level of rehabilitative programs that we could offer on the local level, and those have not worked.” Probation had provided a memorandum about programs available at the DJJ that could benefit the minor. The juvenile court noted that it had not seen any change in the minor’s behavior, and “the pattern” in the minor’s offenses showed “the potential for violence.” The juvenile court stated that many minors “do fairly well when they’re in a supervised setting” like the DJJ. The juvenile court concluded that this was “one of the few cases where I don’t see any alternative to” the DJJ. The juvenile court also commented that the DJJ had programs for cognitive behavioral treatment and programs for “career opportunities.”

Probation recommended a maximum commitment period of nine years six months, which was less than the maximum that could be imposed. The juvenile court adopted the recommendation of nine years six months. The minor was ordered committed to the DJJ.

The minor was informed of his appeal rights and filed a notice of appeal on June 13, 2018.

DISCUSSION

The minor contends the juvenile court abused its discretion when it committed him to the DJJ. Specifically, he contends there was no showing a DJJ commitment would be

beneficial for him; he also contends less restrictive placements were available and appropriate. We disagree.

Section 202, subdivision (b), provides that minors “under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances.” The minor’s rehabilitation and public safety are both important considerations in a juvenile disposition. (*In re J.W.* (2015) 236 Cal.App.4th 663, 667.)

“The purpose of juvenile delinquency laws is twofold: (1) to serve the ‘best interests’ of the delinquent ward by providing care, treatment, and guidance to rehabilitate the ward and ‘enable him or her to be a law-abiding and productive member of his or her family and the community,’ and (2) to ‘provide for the protection and safety of the public’ (§ 202, subds. (a), (b) & (d); [citations].)” (*In re Charles G.* (2004) 115 Cal.App.4th 608, 614.) “In determining the judgment and order to be made in any case in which the minor is found to be a person described in Section 602, the court shall consider, in addition to other relevant and material evidence, (1) the age of the minor, (2) the circumstances and gravity of the offense committed by the minor, and (3) the minor’s previous delinquent history.” (§ 725.5.)

The juvenile system is designed to give juvenile courts maximum flexibility in fashioning a disposition. (*In re Greg F.* (2012) 55 Cal.4th 393, 411–412.) A juvenile court’s commitment decision will be reversed only on a showing of abuse of discretion. “ “A reviewing court must indulge in all reasonable inferences to support the findings of the juvenile court” ’ ” (*In re Travis J.* (2013) 222 Cal.App.4th 187, 199.)

A DJJ commitment is not an abuse of discretion where the record demonstrates “both a probable benefit to the minor ... and the inappropriateness or ineffectiveness of less restrictive alternatives.” (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396.)

In this case, less restrictive placements were tried repeatedly and failed to effect any change for the better in the minor's behavior. Probation with in-home placement, juvenile hall, and various programs at the Bear Creek Academy, including the most restrictive program in which the minor was placed four times, all failed to reform the minor. Despite the minor's claim to the contrary, all available local options had been tried with him over the five years he was before the juvenile court and his behavior worsened. The only viable remaining placement was the DJJ, as the juvenile court noted.

No fewer than five section 602 petitions were filed against the minor, in addition to multiple violations of probation. The minor continued to engage in criminal activity, including robberies and the substantive gang offense. In addition, the minor continued to use alcohol and marijuana. He often failed to return home and his whereabouts were unknown by his parents.

Prior to committing the minor to the DJJ, the juvenile court had requested from probation a report on what programs were available at the DJJ that could specifically benefit the minor. The DJJ had programs that would provide cognitive behavioral treatment for the minor and programs that would provide "career opportunities."

The restrictive environment at the DJJ would provide for the protection and safety of the public and afford an opportunity for the minor to avail himself of the DJJ programs and reform his behavior, which no less restrictive alternative had accomplished. (*In re J.W.*, *supra*, 236 Cal.App.4th at pp. 667–668.)

The juvenile court did not abuse its discretion in committing the minor to the DJJ. (*In re Angela M.*, *supra*, 111 Cal.App.4th at p. 1397.)

DISPOSITION

The May 16, 2018 order committing the minor to the Department of Juvenile Justice is affirmed.